S.B. CIVIL WRIT PETITION NO.9062/2006.

Suresh Chand Khandelwal
Vs.
Presiding Officer Rent Control Tribunal
Alwar and ors.

Date of order : 22/5/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri A.K. Bajpai for the petitioner.
Shri S.K. Gupta for the respondents.

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Heard learned counsel for the parties.

The pertitioner is challenging the order dated 11/10/2006 whereby his application as non-applicant tenant for producing as many as seven affidavits on record has been declined by the learned Rent Tribunal.

Learned counsel for the petitioner argued that those affidavits are very essential to be taken on record because petitioner is a tenant in the shop in qauestion for quite some time and if his evidence is not properly produced on

record, it may occasion miscarriage of justice. He argued that the landlord-respondent also produced his affidavits in support of the petition on different dates i.e. 20/1/2004, 11/3/2004 and 26/8/2005.

On the other hand, Shri S.K. Gupta while opposing the writ petition argued that the respondents filed the affidavits at the stage when the cross-examination of the defendant and his witnesses had not yet taken place whereas the petitioner's application for placing these seven affidavits on record was filed much after closure of evidence of both the parties at the stage when the matter was directed to be posted for final arguments. He referred to Section 15(3) of the Rent Control Act, 2001 and argued that the legislature had intended that the contesting parties should file their affidavits alongwith the petition/reply thereto by use of the word “shall“ which indicate that the provision is mandatory in nature and could not be allowed to be deviated from. Alternatively, he submitted that in case

request of the petitioner is considered, a heavy cost should be awarded because petitioner is running the commercial venture from the shop in question and is prolonging the proceedings of his ejectment based on the personal bonafide necessity of the landlord.

Having heard learned counsel for the parties and perusing the record, it appears that the petitioner, when he filed the written statement on 30/12/2003, rest contended with the filing of his own affidavit. He did not even mention the names of the witnesses on whose evidence he wanted to rely on while filing written statement to the claim petition. At a very belated stage when the matter was directed for final arguments, he filed an application on 26/4/2006 to place on record the seven affidavits.

The legislature indeed by using the word “shall“ incorporated in Section 15(3) of the Rent Control Act, 2001 intended filing of affidavits alongwith the petition/reply itself but in the facts of

the case, when the proceedings of the trial court has remained stayed by the order of this Court, it is considered proper that the affidavits filed by the petitioner are allowed to be taken on record though with the payment of substantial cost which is quantified as Rs.3000/- with the condition that he shall produce all the witnesses in the trial on the next date of hearing for the purpose of cross-examination and the affidavits of such of the witnesses who fail to turn up for cross-excamination on that date, except for the reason that the court itself for its convenience of proceedings defer the matter at any other early date, shall not be liable to be read in evidence.

With these observations, this petition is partly allowed and disposed of accordingly.

(MOHAMMAD RAFIQ), J.

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